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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

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11 EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

12 Plaintiff,

13 v.

14 NORTHWEST MOTORSPORT, INC.,

15 Defendant.

CASE NO. 12-5728 RJB

ORDER ON PLAINTIFF'S MOTION  
TO COMPEL DISCOVERY  
REGARDING DEFENDANT'S  
FINANCIAL INFORMATION

16 This matter comes before the Court on the Plaintiff Equal Employment Opportunity  
17 Commission's ("EEOC") Motion to Compel Discovery Regarding Defendant's Financial  
18 Information. Dkt. 23. The Court has considered the pleadings filed regarding the motion and the  
19 remaining record.

20 **I. FACTS**

21 This case is brought under Title VII of the Civil Rights Act of 1964 and Title I of the Civil  
22 Rights Act of 1991 to address the allegedly unlawful employment practices of Defendant and to  
23 provide relief to the charging party, Bayani Salcedo, a Filipino male. Dkt. 1.  
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1 In the instant motion, the EEOC seeks to compel answers to its Requests for Production  
2 Nos. 7 and 8, which were requests for certified financial statements from January 1, 2006 to date,  
3 and federal tax returns for 2006 through 2011. Dkt. 23. The EEOC references an agreement of  
4 the parties regarding this information, but states that Defendant did not respond to its efforts to  
5 draft a joint motion to extend the discovery deadline solely to address Defendant's financial  
6 information. *Id.* The EEOC further moves for an extension of time for the discovery deadline to  
7 July 17, 2013. *Id.*

8 In Defendant's response, it states that it "does not dispute the relevance of certain  
9 financial information" and "has not objected to its production." Dkt. 25, at 4. It asserts that "the  
10 parties conferred and agreed to a narrower scope and alternative timing of the requested  
11 information." *Id.* It states that it did make available its 2009 and 2010 tax returns. *Id.*  
12 Defendant asserts that, by agreement of the parties, it was to provide more comprehensive  
13 financial information after mediation, if necessary. *Id.* Defendant acknowledges that due to  
14 major upheaval in its counsel's office, it was not able to respond to the EEOC's draft proposal  
15 timely. *Id.* It briefly references a protective order for "financial information." *Id.*

16 The EEOC replies, and again points out that the Defendant has not provided full  
17 responses to the discovery requests regarding financial information, and that information is  
18 relevant to punitive damages. Dkt. 29. The EEOC argues that Defendant has not objected to that  
19 discovery and has therefore waived any objections it may have. *Id.* The EEOC further asserts  
20 that if Defendant is making a motion for a protective order, it did not follow the Federal or Local  
21 Rules of Civil Procedure and has failed to make the proper showing. *Id.*

22 On June 14, 2013, the day this motion was noted for consideration, the parties filed a  
23 stipulation to renote the motion, which was granted. Dkts. 27 and 30. The following Monday,  
24

1 June 17, 2013, parties contacted the Court by telephone and requested that the discovery deadline  
2 be extended to June 24, 2013. It was extended by minute order. On June 19, 2013, Defendant  
3 filed a surreply. Dkt. 31. On June 20, 2013, counsel from the EEOC contacted the Court by  
4 phone and requested guidance relating to the surreply. On June 24, 2013, all parties contacted  
5 the Court and requested an extension of the discovery deadline for the deposition of Mr. Kenneth  
6 Wren to July 24, 2013.

7 This opinion will first address the surreply and the ex parte contact regarding the  
8 surreply, then the motion to compel, and lastly, Defendant's motion for a protective order, to the  
9 extent one is made.

## 10 **II. DISCUSSION**

### 11 **A. SURREPLY AND EX PARTE CONTACT**

12 Pursuant to Western District of Washington R. Civ. P. 7(g)(2), a surreply shall be  
13 "strictly" limited to addressing a request to strike and "extraneous argument or a surreply filed  
14 for any other reason will not be considered."

15 Defendant's surreply (Dkt. 31), filed on June 19, 2013, should not be considered. It was  
16 not filed in accordance with Local Rule 7. It does not address a motion to strike, and is, instead,  
17 a recitation of the parties' continued discussion of how to resolve this discovery dispute.

18 The parties should refrain from contacting the Court ex parte. Any contact with the Court  
19 should be done with both parties' involvement or by motion.

### 20 **B. MOTION TO COMPEL**

21 Pursuant to Fed. R. Civ. P. 26(b)(1), "[p]arties may obtain discovery regarding any  
22 nonprivileged matter that is relevant to any party's claim or defense." Under Fed. R. Civ. P.  
23 37(a)(1), "a party may move for an order compelling disclosure or discovery. The motion must  
24

1 include a certification that the movant has in good faith conferred or attempted to confer with the  
 2 person or party failing to make disclosure or discovery in an effort to obtain it without court  
 3 action.”

4 The EEOC’s Motion to Compel (Dkt. 23) should be granted. The EEOC has shown that  
 5 the requested discovery is relevant to its claim for punitive damages. Although Defendant  
 6 argues that it produced the tax returns the parties had agreed on and then reached an agreement  
 7 about how to handle other financial information, that does not provide a basis for the Court to  
 8 deny this motion. The EEOC is entitled to the requested discovery. Defendant should be  
 9 ordered to turn over such information on or before July 9, 2013. *Id.* In an effort to move the  
 10 case along, the EEOC’s motion to extend the discovery deadline to July 17, 2013 solely  
 11 regarding the financial information should be granted. Further, the parties’ stipulated motion to  
 12 extend the discovery deadline as to the deposition of Mr. Kenneth Wren to July 24, 2013 should  
 13 be granted. Parties are strongly encouraged to work together to resolve all disputes of this  
 14 nature.

### 15 **C. PROTECTIVE ORDER**

16 Pursuant to Fed. R. Civ. P 26(c)(1),

17 A party or any person from whom discovery is sought may move for a protective  
 18 order in the court where the action is pending--or as an alternative on matters  
 19 relating to a deposition, in the court for the district where the deposition will be  
 20 taken. The motion must include a certification that the movant has in good faith  
 21 conferred or attempted to confer with other affected parties in an effort to resolve  
 22 the dispute without court action. The court may, for good cause, issue an order to  
 23 protect a party or person from annoyance, embarrassment, oppression, or undue  
 24 burden or expense . . . .

To the extent that Defendant moves for a protective order for “financial information,” the  
 motion should be denied without prejudice. Defendant has not shown “good cause” or identified  
 the documents for which it seeks the protective order. Lastly, the EEOC properly points out that

Defendant did not file the motion in accord with the Local Rule 7. It did not file it as a separate motion, or note it for consideration.

### III. ORDER

It is **ORDERED** that:

- Plaintiff Equal Employment Opportunity Commission's Motion to Compel Discovery Regarding Defendant's Financial Information (Dkt. 23) **IS GRANTED**;
- Defendant **SHALL** produce the requested financial information on or before July 9, 2013;
- The discovery deadline, solely regarding the financial information of Defendant, **IS EXTENDED** to July 17, 2013;
- The discovery deadline for the deposition of Mr. Kenneth Wren **IS EXTENDED** to July 24, 2013;
- Defendant's Motion for a Protective Order (Dkt. 25), to the extent one is made, **IS DENIED WITHOUT PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 24<sup>th</sup> day of June, 2013.



ROBERT J. BRYAN  
United States District Judge